

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	DATE FILED: <u>8-17-04</u>
v.	:	CRIMINAL NO. <u>04-222</u>
PERRY SMITH KEVIN CLEVELAND	:	VIOLATIONS: 18 U.S.C. § 1951 (Conspiracy to commit robbery which interfered with interstate commerce - 1 count) 18 U.S.C. § 1951 (Interference with interstate commerce by robbery -1 count) 18 U.S.C. § 924(c)(1) (Carrying a firearm during a crime of violence - 2 counts) 18 U.S.C. § 2119 (Carjacking - 1 count) 18 U.S.C. § 2 (Aiding and abetting) Notice of Additional Factors Notice of forfeiture

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

1. At all times material to this indictment, the Shernoff Salads Company store located at 1400 Warfield Street, Philadelphia, Pennsylvania, was a business engaged in interstate commerce.

THE CONSPIRACY

2. From on or about August 12, 2003, through on or about August 14, 2003, at Philadelphia, in the Eastern District of Pennsylvania, defendants

PERRY SMITH and
KEVIN CLEVELAND

conspired and agreed together, to commit robbery, which robbery would unlawfully obstruct, delay and affect commerce, and the movement of articles and commodities in commerce, in that

the defendants PERRY SMITH and KEVIN CLEVELAND conspired to unlawfully take and obtain currency and property from Shernoff Salads Company, in the presence of employees of that business and against their will, by means of actual and threatened force, violence, and fear of injury, immediate and future, to their person and property in their possession, in violation of Title 18, United States Code, Sections 1951(a), 1951(b)(1) and 1951(b)(3).

MANNER AND MEANS

3. It was part of the conspiracy to rob Shernoff Salads Company, and to obtain the cash proceeds and property from the business, at gunpoint and by threatening to use and using force and violence against the store employees.

OVERT ACTS

In furtherance of the conspiracy and to effect the object of the conspiracy, the following overt acts, among others, were committed on or about August 12, 2003 through on or about August 14, 2003, in Philadelphia, in the Eastern District of Pennsylvania:

1. On or about August 13, 2003, defendant KEVIN CLEVELAND carjacked a 1990 Ford Tempo with Pennsylvania tag EYX4649 from a pizza delivery man and stole the license plate from that vehicle.

2. On or about August 13 or 14, 2003, the defendant KEVIN CLEVELAND placed Pennsylvania tag EYX4649 on a silver 1992 Oldsmobile Delta 88 with VIN 1G3HN53L1N1828471 that was stolen on August 12, 2003.

3. Defendants PERRY SMITH and KEVIN CLEVELAND traveled together in the stolen silver 1992 Oldsmobile Delta 88 with VIN 1G3HN53L1N1828471 to the Shernoff Salads Company, 1400 Warfield Street, Philadelphia, armed with firearms.

4. Defendants PERRY SMITH and KEVIN CLEVELAND entered Shernoff Salads Company together carrying concealed firearms and pretended to be customers of the store for a short period of time.

5. Defendants PERRY SMITH and KEVIN CLEVELAND brandished firearms, menaced the store manager, shot a store employee, and took money from the cash box.

6. Defendants PERRY SMITH and KEVIN CLEVELAND stole at gunpoint an undetermined amount of United States currency from Shernoff Salads Company.

7. Defendants PERRY SMITH and KEVIN CLEVELAND fled from the store and got into a stolen silver 1992 Oldsmobile Delta 88 with VIN 1G3HN53L1N1828471 with Pennsylvania Tag EYX-4649 to make their getaway.

_____All in violation of Title 18, United States Code, Sections 1951(a), 1951(b)(1) and 1951(b)(3).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraph 1 and Overt Acts 1 through 7 of Count One of this indictment are incorporated here.

2. On or about August 14, 2003, at Philadelphia, in the Eastern District of Pennsylvania, defendants

PERRY SMITH and
KEVIN CLEVELAND

aided and abetted, and unlawfully obstructed, delayed and affected commerce and the movement of articles and commodities in commerce, by robbery, in that defendants PERRY SMITH and KEVIN CLEVELAND unlawfully took and obtained personal property, that is, an undetermined amount of United States currency, belonging to the Shernoff Salads Company, from employees, against their will, by means of actual and threatened force, violence, and fear of injury, immediate and future, to their person and property in their custody and control.

In violation of Title 18, United States Code, Sections 1951, 1951(b)(1), 1951(b)(3), and 2.

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 14, 2003, at Philadelphia, in the Eastern District of
Pennsylvania, defendants

PERRY SMITH and
KEVIN CLEVELAND

knowingly used and carried, and aided and abetted the use and carrying of firearms, during and
in relation to a crime of violence for which the defendants may be prosecuted in a Court of the
United States, that is, conspiracy to interfere with interstate commerce by robbery and the
interference with interstate commerce by robbery, of Shernoff Salads Company, in violation of
Title 18, United States Code, Section 1951.

In violation of Title 18, United States Code, Sections 924(c)(1) and 2.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 13, 2003, at Philadelphia, in the Eastern District of
Pennsylvania, defendant

KEVIN CLEVELAND,

with intent to cause death and serious bodily harm, did take from the person and presence of
another, by force and violence and by intimidation, a motor vehicle, that is, a 1990 Ford Tempo
with Pennsylvania Tag EYX-4649, that had been transported, shipped and received in interstate
commerce.

In violation of Title 18, United States Code, Sections 2119.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 13, 2003, at Philadelphia, in the Eastern District of
Pennsylvania, defendant

KEVIN CLEVELAND

knowingly used and carried, and aided and abetted the use and carrying of a firearm, during and
in relation to a crime of violence for which the defendant may be prosecuted in a Court of the
United States, that is, robbery of a motor vehicle from Terry Muchison, in violation of Title 18,
United States Code, Section 2119.

In violation of Title 18, United States Code, Sections 924(c)(1)

NOTICE OF ADDITIONAL FACTORS

THE GRAND JURY FURTHER CHARGES THAT:

1. In committing the offense charged in Count One and in Count Two of this indictment, defendants Perry Smith and Kevin Cleveland:

a. Committed an offense in which a firearm was discharged, as described in U.S.S.G. § 2B3.1(b)(2)(A).

b. Committed an offense in which a firearm was otherwise used, as described in U.S.S.G. § 2B3.1(b)(2)(B).

c. Committed an offense in which a firearm was brandished, and possessed, as described in U.S.S.G. § 2B3.1(b)(2)(C).

d. Committed an offense in which a dangerous weapon was otherwise used, as described in U.S.S.G. § 2B3.1(b)(2)(D).

e. Committed an offense in which a dangerous weapon was brandished and possessed, as described in U.S.S.G. § 2B3.1(b)(2)(E).

f. Committed an offense in which a threat of death was made, as described in U.S.S.G. § 2B3.1(b)(2)(F).

g. Committed an offense in which any victim sustained bodily injury, as described in U.S.S.G. § 2B3.1(b)(3)(A).

h. Committed an offense in which any victim sustained serious bodily injury, as described in U.S.S.G. § 2B3.1(b)(3)(B).

i. Committed an offense in which any victim sustained permanent and life threatening bodily injury, as described in U.S.S.G. § 2B3.1(b)(3)(C).

j. Used and possessed any firearm and ammunition in connection with another felony offense, as described in U.S.S.G. § 2K2.1(b)(5).

k. Used and possessed any firearm and ammunition in connection with the commission and attempted commission of another offense, as described in U.S.S.G. § 2K2.1(c)(1).

NOTICE OF ADDITIONAL FACTORS

THE GRAND JURY FURTHER CHARGES THAT:

1. In committing the offense charged in Count One of this indictment and Count Two of this indictment, defendant Perry Smith:

a. Committed the instant offense while under a criminal justice sentence, that is, probation, as defined by U.S.S.G. § 4A1.1(d).

NOTICE OF ADDITIONAL FACTORS

THE GRAND JURY FURTHER CHARGES THAT:

1. In committing the offense charged in Count One of this indictment and Count Two of this indictment, defendant Kevin Cleveland:
 - a. Committed the instant offense while under a criminal justice sentence, that is, parole, as defined by U.S.S.G. § 4A1.1(d).
 - b. Committed the instant offense less than two years after release from imprisonment on a sentence of imprisonment exceeding one year and one month, as defined by U.S.S.G. § 4A1.1 (a) and (e).
 - c. Committed the instant offense less than two years after release from imprisonment on a sentence of imprisonment of at least sixty days, as defined by U.S.S.G. § 4A1.1(b) and (e).
 - d. Was a career offender, as defined by U.S.S.G. § 4B1.1.

NOTICE OF ADDITIONAL FACTORS

THE GRAND JURY FURTHER CHARGES THAT:

1. In committing the offense charged in Count Four of this indictment, defendant Kevin Cleveland:
 - a. Used and possessed any firearm and ammunition in connection with another felony offense, as described in U.S.S.G. § 2K2.1(b)(5).
 - b. Used and possessed any firearm and ammunition in connection with the commission and attempted commission of another offense, as described in U.S.S.G. § 2K2.1(c)(1).
 - c. Committed an offense in which a firearm was otherwise used, as described in U.S.S.G. § 2B3.1(b)(2)(B).
 - d. Committed an offense in which a firearm was brandished, and possessed, as described in U.S.S.G. § 2B3.1(b)(2)(C).
 - e. Committed an offense in which a dangerous weapon was otherwise used, as described in U.S.S.G. § 2B3.1(b)(2)(D).
 - f. Committed an offense in which a dangerous weapon was brandished and possessed, as described in U.S.S.G. § 2B3.1(b)(2)(E).
 - g. Committed an offense in which a threat of death was made, as described in U.S.S.G. § 2B3.1(b)(2)(F).
 - j. Committed an offense involving carjacking, as described in U.S.S.G. § 2B3.1(b)(5).
 - k. Committed the instant offense while under a criminal justice

sentence, that is, parole, as defined by U.S.S.G. § 4A1.1(d).

l. Committed the instant offense less than two years after release from imprisonment on a sentence of imprisonment exceeding one year and one month, as defined by U.S.S.G. § 4A1.1 (a) and (e).

m. Committed the instant offense less than two years after release from imprisonment on a sentence of imprisonment of at least sixty days, as defined by U.S.S.G. § 4A1.1(b) and (e).

n. Was a career offender, as defined by U.S.S.G. § 4B1.1.

NOTICE OF ADDITIONAL FACTORS

THE GRAND JURY FURTHER CHARGES THAT:

1. In committing the offense charged in Counts Three and Five of this indictment, defendant Kevin Cleveland:
 - a. Was a career offender, as defined by U.S.S.G. § 4B1.1.

NOTICE OF FORFEITURE

As a result of the violations of Title 18, United States Code, Sections 924(c), set forth in this indictment, defendants

PERRY SMITH and
KEVIN CLEVELAND

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 924(d), and Title 28, United States Code, Section 2461(c), the firearms and ammunition involved in the commission of these offenses.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 924(d).

A TRUE BILL:

GRAND JURY FOREPERSON

PATRICK L. MEEHAN
United States Attorney